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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 FINJAN, INC.,

8 Plaintiff,

9 v.

10 BLUE COAT SYSTEMS, LLC,

11 Defendant.

Case No. 15-cv-03295-BLF

**OMNIBUS ORDER RE:
ADMINISTRATIVE MOTIONS TO
SEAL DOCUMENTS**

[Re: ECF 238, 240, 242]

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13 Before the Court are three administrative motions to file under seal, one from Plaintiff
14 Finjan, Inc. (“Finjan”) and two from Defendant Blue Coat Systems, LLC (“Blue Coat”). ECF
15 238, 240, 242. Two relate to the opposing briefing on the parties’ cross-motions for summary
16 judgment. *See* ECF 238, 240. The other relates to Blue Coat’s opening motion for summary
17 judgment. *See* ECF 242. For the reasons set forth below, Blue Coat’s motion at ECF 238 is
18 GRANTED IN PART and DENIED IN PART, Finjan’s motion at ECF 240 is GRANTED IN
19 PART and DENIED IN PART, and Blue Coat’s motion at ECF 242 is GRANTED.

20 **I. LEGAL STANDARD**

21 “Historically, courts have recognized a ‘general right to inspect and copy public records
22 and documents, including judicial records and documents.’” *Kamakana v. City & Cnty. of*
23 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435
24 U.S. 589, 597 & n.7 (1978)). Consequently, access to motions and their attachments that are
25 “more than tangentially related to the merits of a case” may be sealed only upon a showing of
26 “compelling reasons” for sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092,
27 1101-02 (9th Cir. 2016). Filings that are only tangentially related to the merits may be sealed
28 upon a lesser showing of “good cause.” *Id.* at 1097. In addition, sealing motions filed in this

district must be “narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b). A party moving to seal a document in whole or in part must file a declaration establishing that the identified material is “sealable.” Civ. L.R. 79-5(d)(1)(A). “Reference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable.” *Id.*

II. DISCUSSION

The Court has reviewed the parties’ sealing motions and the declarations submitted in support thereof. The Court finds that the parties have articulated compelling reasons and good cause to seal certain portions of the submitted documents. The proposed redactions are also narrowly tailored. The Court’s rulings on the sealing requests are set forth in the tables below:

A. ECF 238

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
238-4	Blue Coat’s Opposition to Finjan’s Motion for Summary Judgment	GRANTED as to highlighted portions.	Contain references to highly confidential Blue Coat information regarding products and functionality, operation, architecture, and development thereof. Declaration of Eugene Marder in Support of Administrative Motion to File Under Seal, ECF 238-2 (“Marder Blue Coat Sealing Decl.”) ¶ 7.
238-6	Ex. 1 to Marder Declaration in Support of Blue Coat’s Opposition to Finjan’s Motion for Summary Judgment, ECF 237 (“Marder Decl.”)	GRANTED as to highlighted portions.	Contains references to highly confidential Blue Coat information regarding products and functionality, operation, architecture, and development thereof, including reference to portions of Blue Coat’s source code. Marder Blue Coat Sealing Decl. ¶ 8.
238-8	Ex. 2 to Marder Decl.	GRANTED as to highlighted portions.	Contains references to highly confidential Blue Coat information regarding products and functionality, operation, architecture, and development thereof. Marder Blue Coat Sealing Decl. ¶ 9.

238-9	Ex. 3 to Marder Decl.	GRANTED.	Contains references to highly confidential Blue Coat information regarding products and functionality, operation, architecture, and development thereof, including references to portions of Blue Coat's source code. Marder Blue Coat Sealing Decl. ¶ 10.
238-10	Ex. 7 to Marder Decl.	GRANTED.	Reflects highly confidential Blue Coat information regarding products and functionality, operation, architecture, and development thereof. Marder Blue Coat Sealing Decl. ¶ 11.
238-11	Ex. 8 to Marder Decl.	GRANTED.	Contains references to highly confidential Blue Coat information regarding products and functionality, operation, architecture, and development thereof. Marder Blue Coat Sealing Decl. ¶ 12.
238-12	Ex. 9 to Marder Decl.	GRANTED.	Contains references to highly confidential Blue Coat information regarding products and functionality, operation, architecture, and development thereof. Marder Blue Coat Sealing Decl. ¶ 13.
238-13	Ex. 17 to Marder Decl.	DENIED.	Finjan, the designating party, has not filed a declaration in support of sealing. <i>See</i> Marder Blue Coat Sealing Decl. ¶ 14.

B. ECF 240

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
240-4	Finjan's Opposition to Blue Coat's Motion for Summary Judgment	GRANTED as to highlighted portions.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Declaration of Eugene Marder in Support of Finjan's Administrative Motion to File Under Seal, ECF 244 ("Marder Finjan Sealing Decl.") ¶ 6.
240-6	Ex. 3 to Kastens Declaration in Support of Finjan's Opposition to Blue Coat's Motion for Summary Judgment, ECF 241-1 ("Kastens Decl.")	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 7.

1	240-8	Ex. 4 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 8.
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3	240-10	Ex. 5 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 9.
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5	240-12	Ex. 6 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 10.
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7	240-14	Ex. 7 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 11.
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10	240-16	Ex. 10 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 12.
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12	240-18	Ex. 11 to Kastens Decl.	DENIED.	Neither party supports filing this exhibit under seal. <i>See</i> Marder Finjan Sealing Decl. ¶ 13; Declaration of James Hannah in Support of Finjan's Administrative Motion to File Under Seal ("Hannah Sealing Decl."), ECF 240-1 ¶ 7.
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15	240-20	Ex. 12 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 14.
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17	240-22	Ex. 13 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 15.
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20	240-24	Ex. 14 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 16.
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22	240-26	Ex. 17 to Kastens Decl.	GRANTED as to page BC2-0778674; DENIED as to the remainder	Page BC2-0778674 contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 17. Neither party supports filing the remainder of this document under seal. <i>See id.</i> ; Hannah Sealing Decl. ¶ 7.
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240-28	Ex. 18 to Kastens Decl.	GRANTED as to the excerpts at 7:15-14:25; DENIED as to the remainder.	The excerpts at 7:15-14:25 contain highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 18. Neither party supports filing the remainder of this document under seal. <i>See id.</i> ; Hannah Sealing Decl. ¶ 7.
240-30	Ex. 19 to Kastens Decl.	GRANTED as to the excerpts at pages 5-6; DENIED as to the remainder.	The excerpts at pages 5-6 contain highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 19. Neither party supports filing the remainder of this document under seal. <i>See id.</i> ; Hannah Sealing Decl. ¶ 7.
240-32	Ex. 20 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 20.
240-34	Ex. 26 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 21.
240-36	Ex. 29 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 22.
240-38	Ex. 30 to Kastens Decl.	GRANTED.	Contains highly confidential technical information regarding Blue Coat's proprietary technology, and confidential aspects of Blue Coat's business. Marder Finjan Sealing Decl. ¶ 23.
240-40	Ex. 33 to Kastens Decl.	GRANTED.	Consists entirely of Blue Coat source code. Marder Finjan Sealing Decl. ¶ 24.
240-42	Ex. 34 to Kastens Decl.	GRANTED.	Consists entirely of Blue Coat source code. Marder Finjan Sealing Decl. ¶ 25.

C. ECF 242

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
242-4	Blue Coat's Motion for Summary Judgment	GRANTED as to highlighted portions.	Contains information relating to details of the internal operation of Blue Coat's products, including source code routines and backend systems related to those products, as well as Blue Coat's confidential business operations. Declaration of Eugene Marder in Support of Renewed Administrative Motion to File Under Seal, ECF 242-1 ("Marder Blue Coat Sealing Decl.") ¶¶ 5-10.

For the foregoing reasons, Blue Coat's motion at ECF 238 is GRANTED IN PART and DENIED IN PART, Finjan's motion at ECF 240 is GRANTED IN PART and DENIED IN PART, and Blue Coat's motion at ECF 242 is GRANTED. Under Civil Local Rule 79-5(e)(2), for any request that has been denied because the party designating a document as confidential or subject to a protective order has not provided sufficient reasons to seal, the submitting party must file the unredacted (or lesser redacted) documents into the public record no earlier than 4 days and no later than 10 days from the filing of this order.

Dated: June 8, 2017

BETH LABSON FREEMAN
United States District Judge